LAW SOCIETY OF SINGAPORE v. CHAN CHOW WANG

[O.C.J. (Wee Chong Jin C.J., Chua & Choor Singh JJ.) November 22, 1974]

[Singapore — Originating Summons No. 253 of 1974]

Legal Profession — Advocates and Solicitors — Disciplinary proceedings — Champertous agreement — False representation — Fraudulent conduct — Striking off the roll of solicitors — Legal Profession Act (Cap. 217), ss. 84(1) & (2) and 107(1)(b) & (3).

The respondent was an advocate and solicitor practising under the firm name of Chan Chow Wang & Co. Disciplinary proceedings were commenced against him on *inter alia* the following charges:—

(a) that he entered into a champertous agreement to deduct $10 for every $100 damages awarded in connection with an action of which he had the conduct in contravention of section 107(1)(b) and (3) of the Legal Profession Act.

(b) that he falsely represented to the complainant that her son's employers' insurers had offered to pay $3,300 damages thereby being guilty of fraudulent conduct in the discharge of his professional duty.

(c) that he deducted $1,000 alleged to be solicitor and client's costs without the knowledge and consent of the complainant and without disclosing that the party and party costs of $1,000 had been paid thereby being guilty of fraudulent conduct in the discharge of his professional duty.

The Disciplinary Committee found that all the three charges had been proved against the respondent and that there was a cause of sufficient gravity for disciplinary action under section 84 of the Legal Profession Act. On reference to a court of three judges,

Held: the Disciplinary Committee were justified in coming to the conclusions they did. Cause had been shown that the respondent should be dealt with under section 84(1) of the Legal Profession Act. The appropriate punishment for the charges found proved was that the respondent be struck off the roll of solicitors.

Cases referred to:-

(1) *Surinder Singh Kanda* v. *The Government of the Federation of Malaya* [1962] M.L.J. 169.

(2) *Ridge* v. *Baldwin* [1964] A.C. 40.

(3) *Furnell* v. *Whangarei High Schools Board* [1973] 1 All E.R. 400.

(4) *Lau Liat Meng* v. *Disciplinary Committee* [1967] 2 M.L.J. 141.

ORIGINATING SUMMONS.

S. K. Lee for the applicants.

John Newey Q.C. and *Leong Wai Yin* for the respondent.

Wee Chong Jin C.J.: (delivering the judgment of the Court): In September 1971 a twenty-year-old labourer, Ng Sa Chia, injured his hand while at work in the premises of his employers, Bridgestone Singapore Ltd. Six months later in March 1972 he consulted Mr. Chan Chow Wang (hereinafter referred to as "Mr. Chan"), an advocate and solicitor practising under the firm name of Chan Chow Wang & Co. The evidence on this visit is conflicting. Ng Sa Chia said he went to Mr. Chan's office with a fellow employee, Osman, and two others on 4th March and saw a clerk who took down his Identity Card particulars. He told the clerk about the injury to his hand. Then they returned to his home where the clerk saw his mother, Madam Seah Huay, took down her Identity Card particulars, obtained her fingerprint on a piece of paper and was given his doctor's report cards. He said he did not see Mr. Chan at that visit.

Mr. Chan, however, said Ng Sa Chia consulted him on 3rd March having come into his inner office with Osman and his clerk who showed him an "Instruction Sheet" attached to which were two hospital registration cards. This "Instruction Sheet" was a plain foolscap piece of paper on which the clerk had written the personal particulars of Ng Sa Chia and particulars with a diagram relating to the injury suffered by Ng Sa Chia. This document is undated.

According to Madam Seah Huay she was given a note to see a lawyer by one of the persons who came to her house on 4th March and in response to it she went to see the lawyer named in the note on 6th March and the lawyer she saw was Mr. Chan at his inner office. She went with another son, Ng Kim Pan. She asked Mr. Chan how he would compute his fees and was told by Mr. Chan that "if we won against the Insurance Company he would take 10%". As she did not understand what that meant he explained to her that "if we won the case and if the Insurance Company paid $100 he would tax me $10" to which she agreed. She said she did not pay any money to Mr. Chan nor did he ask her to pay any money. She left after he had told her to go to his office if she received a letter from him.

Mr. Chan gave a totally different version. He said that Madam Seah Huay saw him in the inner office on 4th March accompanied by her son, Ng Kim Pan. They came into his room with his clerk who brought two documents which he referred to as "Instruction Sheets". One of these documents was the "Instruction Sheet" already referred to and the other, also a plain foolscap sheet of paper, had written on it by the clerk the personal particulars of Madam Seah Huay and Ng Sa Chia. After satisfying himself that Madam Seah Huay was the mother of Ng Sa Chia, he ascertained from her that she wanted to claim compensation for the injuries sustained by her son. He was asked by her what his legal costs would be. He explained to her in the Hokien dialect that he was unable at that stage to tell her because he did not know the full extent of her son's injuries and the amount of work he would have to do. He told her that if the claim was settled or if judgment was entered in her favour, "the defendants would pay me part of the costs which is party and party costs and that she would have to pay one part of the costs which is Solicitor and Client costs over and above party and party costs". He also told her he would tell her what his costs would be at the completion of the case and if she disagreed with his costs she could have the bill taxed by the Registrar and that from his experience of taxation the Registrar would allow Solicitor and Client costs at about 10% of the sum awarded in negligence cases. He said that he explained to her the difference between party and party costs and Solicitor and Client costs by telling her that there are two sets of costs; one set would be payable by the defendants and the other set she would have to pay him. While he was telling her about the probable costs she asked him what 10% meant and he explained it meant $10 in every $100.

About three months later in June 1972 Madam Seah Huay received a single sentence letter from Mr. Chan's firm which reads: "Please kindly call at our office as soon as possible and bring along with you this letter". Prior to writing this letter, Mr. Chan had on 26th May written to the injured's employers, Bridgestone Singapore Ltd. claiming damages and enquiring whether the company was prepared to negotiate, without prejudice, an out of court settlement. The company's insurers replied by letter dated 5th June stating that the circumstances of the accident suggested that the employee was fully responsible for his own injuries. Madam Seah Huay responded to Mr. Chan's letter. The evidence on this visit is again in acute conflict. She said she went alone and saw Mr. Chan who told her that if the Insurance Company compensated her too little such as $2,000 to $3,000 she was not to accept it and to show the letter to him. She accepted his advice and then left.

Mr. Chan's version was completely different. He said she and her injured son came and saw him on 13th June in his inner office with his clerk who brought in the relevant office file and another "Instruction Sheet". This document had a date "13/6/72" written on it by the clerk and an account of how Ng Sa Chia came to suffer the injury to his hand. Mr. Chan said he told Madam Seah Huay that the Insurance Company had written denying liability and in the circumstances he had to commence proceedings in the High Court. He also told her that as her son was under twenty-one years of age she would have to sign a Consent to Act as next friend. Three copies of a Consent to Act were then prepared and in his presence she affixed her thumbprint on them.

About three months later Mr. Chan's firm commenced proceedings in the High Court. The Writ was issued on 5th September 1971 naming Bridgestone Singapore Ltd. as defendants. On 21st September Mr. Chan's firm received a letter from a firm of solicitors who had entered appearance on behalf of the company. The next day at the request of the solicitor in charge of the matter for the company Mr. Chan met him and after discussion an offer of settlement of $3,500 damages and costs of $1,000 was made on behalf of the company. Mr. Chan made a counter offer of $4,500 and $1,500 costs. On the same day Mr. Chan wrote to Madam Seah Huay, again a single sentence letter, requesting her and her injured son to call at his office and to bring the letter with her.

A few days later Madam Seah Huay and her injured son went to Mr. Chan's office. Her evidence on this, her third visit to Mr. Chan's office, again conflicts with Mr. Chan's version. She said that he told her that there was an offer of $3,000 which she rejected and he then told her he would try to get between $4,000 and $4,500. She agreed to his negotiating on that basis and she then left. She denied he reminded her of costs to be paid by her.

Mr. Chan's version was this. She and her injured son came into his inner office with his clerk. He told her he had commenced proceedings in the High Court and had seen the defendants' lawyer who offered $3,500 and $1,000 costs. He told her $3,500 was on the low side and advised her to reject the offer. She accepted his advice. He then told her he would try and obtain a settlement at between $4,000 and $4,500 and that out of the settlement she would have to pay him his costs in addition to the party and party costs. He then examined the son's scars, made a note of the injuries on this letter which Madam Seah Huay had brought with her and questioned her son on certain aspects relating to the claim for damages. They then left.

Mr. Chan resumed negotiations with the insurance company's solicitors who wrote to his firm on 3rd October 1972 enquiring whether his client would settle "at a global figure of $5,000". Without replying and without disclosing this latest offer to Madam Seah Huay, Mr. Chan took out an application by way of Summons in Chambers on 5th October returnable on 13th October "for an Order that the Plaintiff may be at liberty to sign judgment for consent in this action". There was no affidavit filed in support of the application. The insurance company's solicitors, on being served with the application, wrote to Mr. Chan's firm expressing surprise as they had never agreed to consent to judgment. Mr. Chan replied on 11th October stating that his client was prepared to accept the global offer of $5,000 on condition that their clients were "prepared to consent judgment in the form of general damages at $4,000 and costs at $1,000". In fact Mr. Chan had not informed Madam Seah Huay nor had she expressly instructed him on the global offer of $5,000. The application was heard by the Deputy Registrar on 13th October and by consent it was ordered that the "Plaintiff be at liberty to sign judgment against the abovenamed Defendants for the sum of $4,000 and $1,000 party and party costs in the action".

Subsequently Mr. Chan's firm received a letter dated 23rd October 1972 from the insurance company's solicitors enclosing a cheque for $5,000 and a Discharge Voucher for his client's signature and return. On 27th October Mr. Chan wrote to Madam Seah Huay another single sentence letter requesting her to call at his office. In response she went to Mr. Chan's office with her injured son on 31st October 1972 and saw Mr. Chan. The evidence of what took place is again in acute conflict. Madam Seah Huay said that Mr. Chan gave her a piece of paper and asked her to put her thumbprint on it. After she had done this she was asked to wait outside his room. She was not told nor did she know of the contents of the document she thumbprinted. Then she saw his clerk enter his room, come out and then leave the office. On the clerk's return to the office, he went into Mr. Chan's room and then came out and asked her and her injured son to go into Mr. Chan's room. Inside the room Mr. Chan put $3,000 on the table and asked her to count it and to take it. She counted it and found it was $3,000 in $50 denominations and asked him why he had not asked for $4,500 as promised. He replied that that was the maximum amount; that the case had gone through the District Court and High Court; that the doctor had acted as a witness and testified that that was the maximum amount payable and that if she wanted to accept it, she should do so, but if she refused she might not get a single cent.

She also affixed her thumbprint to another document. Then after her injured son had also counted the money, she took it and they went home.

Mr. Chan's version was this. He told her that her claim had been settled at $4,000 and costs at $1,000. He told her that he had attended before the Registrar, High Court, and that the Registrar had approved the settlement. He told her he produced the medical report which the Registrar inspected. She did not protest that the settlement was too low. He also told her that in addition to the $1,000 which was party and party costs he had received from the insurance company, his further costs would be $1,000 and she agreed. After that he called in his clerk to assist her to thumbprint the Discharge Voucher. He explained the contents of the Discharge Voucher to her and she fully understood him. She affixed her thumbprint to two Discharge Vouchers and his clerk signed as witness and wrote on them her Identity Card number and address. He then told her he would write out a cheque which he would cash for her and she would have to thumbprint on the back of the cheque for his clerk to take it to the bank to cash it. He told her that after his clerk brought back the cash from the bank he would give her $3,000 and he would retain $1,000 as his costs. He then wrote out a cheque for $4,000, obtained her thumbprint on the back of the cheque and on the back of the cheque butt and after that Madam Seah Huay, her injured son and his clerk left his room. His clerk went to cash the cheque at the bank and Madam Seah Huay and her injured son waited in the outer office. Later the three of them came into his room and his clerk handed him $4,000 in cash and he handed Madam Seah Huay $3,000 and he retained $1,000 as his Solicitor and Client costs. He did not give her a receipt for his Solicitor and Client costs because he forgot as he was busy that day.

According to Madam Seah Huay, she felt dissatisfied on reaching home because Mr. Chan had promised to ask for $4,500 and so she asked her injured son to go to his employers' premises to enquire what was the compensation awarded to him. Her injured son went and in the evening came back and told her the amount was $5,000. The next morning she went with her injured son to the employers' premises and she was also told that the amount was $5,000. She therefore went with another son, Ng Kim Ho, to Mr. Chan's office and saw him in his room. She told him that the compensation given for her son was $5,000 but he replied that it was only $3,000 and that it was the Insurance company and not himself that had cheated her. Her son then asked Mr. Chan for the receipt which she had thumbprinted but was told by him that the receipt had been sent to the Insurance company. They then left.

Mr. Chan's account of this, the final visit by Madam Seah Huay to his office is again different. He said she and her son, Ng Kim Ho, came into his room on their own and she asked him to reduce his fees saying he had charged too much. He told her his charges were not too high and he was justified in charging $1,000. She then said that he had $2,000 while her injured son got only $3,000 to which he replied that he had already told her that $1,000 was paid by the Insurance company. He refused to discuss any reduction of his costs and then her son asked for the return of the document which she had thumbprinted. He told them that it had been sent to the solicitors for the Insurance company and after that they left.

After leaving Mr. Chan's office Madam Seah Huay went to the premises of her injured son's employers and again obtained confirmation that the compensation paid by the Insurance company was $5,000. Subsequently she sought advice from the Legal Aid Bureau of the Social Welfare Department and was referred to the Law Society and was told to send a written complaint. This she did by getting the assistance of one Ng Jui Meng, the Assistant Personnel Manager of Bridgestone Singapore Ltd. He was the person she had seen when she visited the premises of her injured son's employers on the two previous occasions. He prepared for her a letter dated 3rd November 1972 to which she affixed her right thumbprint and then sent by registered post to the Secretary of the Law Society. The letter reads as follows: —

"Dear Sir,

I engaged M/s. Chan Chow Wang & Co., Advocates and Solicitors to act on my behalf to sue Bridgestone Singapore Co. Pte. Ltd. where my son Ng Sa Chia is employed, in connection with injuries sustained by my son in an accident in that factory on 3/9/71.

At that time, M/s. Chan Chow Wang verbally informed me that they would deduct as their fees $10 from every $100/- damages awarded to my son.

Subsequently I was told by M/s. Chan Chow Wang that my son would be awarded $3,000/- as damages. I objected to the amount and I told M/s. Chan Chow Wang that the amount is too low. M/s. Chan Chow Wang then said that they would try and negotiate for another $1,500/- to raise the damages to $4,500/- for my son.

On 31/10/72 in response to a letter from M/s. Chan Chow Wang, I went to their office and was told that the damages awarded to my son was $3,300/-. I was also told that M/s. Chan Chow Wang would deduct $300/- as fees and I would receive $3,000/- for my son. I was shown a document in English, which I did not understand, and was made to place my thumbprint on that document. I was then given $3,000/- in cash. I counted the $3,000/- (in currency notes of $50/- denominations) and my son, who was with me, also counted the money.

Later I made inquiries with M/s. Bridgestone Singapore Co. Pte. Ltd. as to what was the actual amount of the settlement made to my son by the insurance company. I was given to understand the amount was $5,000/- inclusive of costs. I further understand that this amount is broken up into $4,000/- damages for my son and $1,000/- party to party costs. The document on which I was made to place my thumb-print by M/s. Chan Chow Wang was in fact a Discharge Form from M/s. United Malayan Insurance Co. regarding receipt by me of the sum of $4,000/- in full and final settlement of all claims in respect of my son's accident.

I cannot understand why I was given only $3,000/- in cash by M/s. Chan Chow Wang when I was made to place my thumb-print on the document purportedly to be a receipt by me of $4,000/-.

I have seen the Legal Aid Bureau on the matter but I was requested to write to you for assistance.

Could you please take up the matter with my solicitors on my behalf and advise me as to what further action I should take to recover the balance of the damages for my son.

I look forward eagerly to your reply.

Yours faithfully,

Right Thumb-Print
of Md. Seah Huay."

On 23rd November 1972 Mr. Chan wrote a letter to Madam Seah Huay. This was a more communicative letter than his earlier letters to her. It reads as follows: —

"Dear Madam,

Re: Suit No. 1937 of 1972
Ng Sa Chia (an infant) suing by his mother and next friend Seah Huay (f)
vs.
Bridgestone Singapore Company (Private) Limited

We refer to above matter which has been settled at $4,000.00 plus party and party costs at $1,000.00 and upon going through our file we note that we have inadvertently omitted to issue you a receipt for the payment of solicitors and client's costs of $1,000.00.

The receipt for the payment of solicitors and client's costs of $1,000.00 is now ready for your collection at our office. You may call at our office to collect the same or if you like we shall post the same to you.

Yours faithfully,

"

Madam Seah Huay did not reply to that letter but instead again sought the assistance of Ng Jui Meng to write another letter to the Law Society. Ng Jui Meng prepared a letter dated 27th November 1972 to the Law Society which she thumbprinted and sent by registered post. This letter reads as follows: —

"Dear Sir,

Further to my registered letter dated 3/11/72, I wish to advise that I have received a letter dated 23/11/72 from M/s. Chan Chow Wang & Co., a copy of which is enclosed herewith for your perusal.

From M/s. Chan Chow Wang's letter dated 23/11/72, you will note that M/s. Chan Chow Wang has deducted $1,000.00 from the settlement of $4,000.00 awarded to my son, the deduction being for payment of solicitors and client's costs. This is in addition to the party and party costs at $1,000.00 which has been paid directly to my solicitors.

I wish to reiterate that when I first sought the services of M/s. Chan Chow Wang & Co. I was categorically informed by my solicitors that they would deduct only $10.00 as their fees from every $100.00 damages awarded to my son. Now I find that my solicitors are charging my son $1,000.00 being solicitors and client's costs, in addition to the party and party costs settled at $1,000.00, making a total of $2,000.00.

Since the total settlement is for $5,000.00, my solicitors should stick to their original agreement to deduct as fees $10.00 from every $100.00 awarded which means that the total amount they could deduct as fees should not exceed $500.00, and my son should be paid $4,500.00 instead of only $3,000.00 which I have received.

To charge my son $1,000.00 for solicitors and client's costs when the party and party costs have been settled at $1,000.00 is very excessive and unreasonable since there was not much work done in my son's case.

I feel that I have been unfairly deprived of the $1,500.00 rightly belonging to my son who should receive $4,500.00 of the settlement money and not $3,000.00 as paid to me.

In view of the above, I strongly urge you to consider my case sympathetically and take whatever action you deem it necessary to recover the balance of the money due to my son. I am prepared to appear before you and testify as to the evidence of the case, if necessary.

I look forward to your favourable reply in due course.
Yours faithfully,
Seah Huay
Right Thumb Print."

On the same day, *i.e.* 27th November, the Secretary of the Inquiry Committee of the Law Society wrote to Mr. Chan sending him a copy of Madam Seah Huay's first letter of 3rd November. This letter reads as follows: —

"Dear Sir,

Pursuant to the provisions of section 87(5) of the Legal Profession Act (Chapter 217), I am directed to forward herewith copy of a letter dated 3rd November, 1972, from Madam Seah Huay of 16B Sian Tuan Avenue, Singapore 21, regarding the conduct of the firm of Chan Chow Wang and Company.

2. The Inquiry Committee has directed me to invite you within fourteen days to give to the Inquiry Committee, in writing, any explanation you may wish to offer and to advise the Committee if you wish to be heard by the Committee.

Yours faithfully,

Secretary,
Inquiry Committee,
The Law Society of Singapore."

On 29th November 1972 Mr. Chan again wrote to her but this time he reverted to the format of his earlier letters to her and in that single sentence letter asked her to call at his office as soon as possible. She did not do so.

On 4th December 1972, the Secretary of the Inquiry Committee wrote a letter to Mr. Chan enclosing a copy of Madam Seah Huay's second letter to the Law Society dated 27th November 1972.

On 11th December 1972 Mr. Chan replied to the Inquiry Committee in the following terms: —

"Dear Sirs,

We refer to your letters of 27th November, 1972 and 4th December, 1972 together with enclosures therein.
We refer to your 2nd paragraph of the letter from Madam Seah Huay to the Law Society dated 3rd November, 1972 and to say, that we did not at any time agree to our costs at $10.00 for every $100.00 of damages awarded. We cannot agree to this because after allowing for disbursements of $127.00 our actual costs will be very low. Also we cannot agree to this because this would amount to professional misconduct.

With reference to paragraphs 3 and 4 of the said letter dated 3rd November, 1972, the fact that settlement at $4,000.00 plus party and party costs at $1,000.00 was fully explained to Madam Seah Huay. In fact we have to obtain a court approval for the settlement. We cannot possibly inform Madam Seah Huay that settlement was at $3,000.00 when documents stating the fact that general damages at $4,000.00 plus party and party costs at $1,000.00 were filed in court; correspondences with the United Malayan Insurance Company and their solicitors Messrs. Donaldson & Burkinshaw clearly stated settlement at $4,000.00 plus party and party costs at $1,000.00.

Furthermore, if we had any intention of not revealing the fact that settlement was at $4,000.00 and party and party costs at $1,000.00, we would not have issued a receipt for solicitor and client costs at $1,000.00 and subsequently, writing to Madam Seah Huay in our letter dated 23rd November, 1972, stating the same. The said letter dated 23rd November, 1972 to Madam Seah Huay was sent to her before we received your letter dated 27th November, 1972 requesting for an explanation.

Although we do not feel that our solicitors and client costs is high in view of the lengthy negotiation with the solicitors for the insurance company and having to obtain court approval; we are prepared to reduce our solicitors and client costs to

$600.00. If Madam Seah Huay is still not prepared to accept the solicitors and clients costs at $600.00 we are prepared to present our Bill of Costs for taxation to the Registrar.

Yours faithfully,
Chan Chow Wang & Co."

On 1st February 1973, the Secretary of the Inquiry Committee wrote to Madam Seah Huay informing her that the Inquiry Committee was investigating into her complaint and asking her to make a Statutory Declaration setting out the facts which she duly made on 21st February 1973. The contents of the Statutory Declaration were similar to the contents of her letter of 3rd November 1972 to the Law Society. The Statutory Declaration is in the following terms: —

" *STATUTORY DECLARATION*

I, SEAH HUAY of No. 16B, Sian Tuan Avenue, Singapore do solemnly and sincerely declare as follows:—

1) I engaged Messrs. Chan Chow Wang & Co. to act on my behalf in a suit against Bridgestone Singapore Co. (Pte) Ltd. for damages for injuries sustained by my son Ng Sa Chia in an accident which occurred in their factory on the 3rd day of September 1971.

2) When I first approached Messrs. Chan Chow Wang & Co. it was agreed verbally that they would deduct as their fees the sum of $10.00 for every $100.00 damages awarded to my son.

3) I was subsequently informed by Messrs. Chan Chow Wang & Co. that there was an offer of $3,000.00 in settlement of my son's claim which offer I rejected whereupon Messrs. Chan Chow Wang & Co. agreed to negotiate further for a higher figure.

4) Upon receipt of a letter from Messrs. Chan Chow Wang & Co. I attended their office on the 31st day of October 1971 and was informed that the sum offered this time was $3,300.00 and that they would deduct $300.00 as their fees leaving me with the sum of $3,000.00. I was then made to place my thumb-print on a document in English which I did not understand and given $3,000.00 in cash.

5) Upon subsequent discussion with Messrs. Bridgestone Company (Pte) Ltd. I discovered that the actual amount of the settlement offered to my son by the insurance company was $5,000.00, comprising $4,000.00 damages and $1,000.00 as party and party costs. At this time I also learned that the document on which I was made to place my thumb-print on was in fact a Discharge Form issued by Messrs. United Malayan Insurance Company acknowledging receipt of the sum of $4,000.00 in full and final settlement of the claim.

6) I do not understand why I was given only $3,000.00 in cash by Messrs. Chan Chow Wang & Co. when I had in fact been made to acknowledge receipt of the sum of $4,000.00.

7) I have consulted the Legal Aid Bureau on the question of the recovery of the balance due to my son but was requested to write to the Law Society of Singapore for assistance.

And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the Statutory Declaration Act, 1835".

The Inquiry Committee did not forward a copy of the Statutory Declaration to Mr. Chan who was unaware that Madam Seah Huay had been asked for and had sent to the Inquiry Committee a Statutory Declaration setting out the facts relating to her complaint. Mr. Chan first became aware of the existence of the Statutory Declaration when Madam Seah Huay was giving evidence at the hearing before the Disciplinary Committee which was appointed by the Chief Justice under section 91 of the Legal Profession Act to hear and investigate the matter.

After inquiring and investigating into the complaint the Inquiry Committee, as required by section 87, reported to the Council of the Law Society. The Council, as required by section 88, considered the report of the Inquiry Committee and determined that there should be a formal investigation by a Disciplinary Committee.

As we have stated a Disciplinary Committee was appointed to hear and investigate the complaint by Madam Seah Huay. The Amended Statement of the case on this complaint contained four charges with five alternative charges. The four principal charges read as follows: —

"(1) In entering into the champertous agreement to deduct as his fees the sum of $10.00 for every $100.00 damages awarded to the complainant's son if he succeeds in the action, in contravention of section 107(1)(b) & (3) of the Legal Profession Act, Cap. 217, the respondent has been guilty of grossly improper conduct under section 84(2)(b) of the Legal Profession Act, Cap. 217.

(2) In falsely representing to the complainant that her son's employers' insurers had offered to pay $3,300.00 damages, the respondent has been guilty of fraudulent conduct in the discharge of his professional duty, contrary to section 84(2)(b) of the Legal Profession Act, Cap. 217.

(3) In withholding payment to the complainant the full sum of $4,000.00 awarded as damages to her son by the employers' insurers and paying her $3,000.00 instead, the respondent has been guilty of fraudulent conduct in the discharge of his professional duty, contrary to section 84(2)(b) of the Legal Profession Act, Cap. 217.

(4) In deducting the sum of $1,000.00 alleged to be solicitor and client's costs without the knowledge and consent of the complainant and without disclosing the fact that the party and party costs of $1,000.00 has been paid the respondent has been guilty of fraudulent conduct in the discharge of his professional duty, contrary to section 84(2)(b) of the Legal Profession Act, Cap. 217."

After a lengthy hearing the Disciplinary Committee found that there was an agreement between Madam Seah Huay and Mr. Chan by which the latter was employed to prosecute on behalf of Madam Seah Huay's son a suit which stipulated for payment only in the event of success in that suit. The Disciplinary Committee also found that Mr. Chan had falsely represented to Madam Seah Huay that the insurance company had offered to pay $3,300 damages for her son's injuries. In respect of the third charge the Disciplinary Committee found that as there was no evidence that Mr. Chan was not entitled to Solicitor and Client costs out of the $4,000 damages paid by the insurance company, the charge had not been proved. The Disciplinary Committee found, lastly that Mr. Chan had deducted the sum of $1,000 without the knowledge and consent of Madam Seah Huay and without disclosing to her the payment by the insurance company of $1,000 as party and party costs. The Disciplinary Committee accordingly determined that cause of sufficient gravity for disciplinary action exists under section 84 and drew up and submitted a report as required by section 93(3).

Following on the report of the Disciplinary Committee the Law Society, as required by section 94(1), made an application, *exparte* under section 98, to a judge of the High Court and an order to show cause was made. The present hearing is under the provisions of section 98(6).

We have set out, at length, the history of this matter and the evidence given by Madam Seah Huay and Mr. Chan before the Disciplinary Committee because of the contentions raised by Mr. Newey, who appeared before us as counsel for Mr. Chan. It is also necessary, because of the arguments raised at the hearing, to set out the relevant provisions of the Legal Profession Act, namely the material sections of Part VII which deals with "Disciplinary Proceedings". The material sections are: —

"84.—(1) All advocates and solicitors shall be subject to the control of the Supreme Court and shall be liable on due cause shown to be struck off the roll or suspended from practice for any period not exceeding two years or censured.

(2) Such due cause may be shown by proof that such person —

(b) has been guilty of fraudulent or grossly improper conduct in the discharge of his professional duty or guilty or such a breach of any usage or rule of conduct made by the Council under the provisions of this Act as in the opinion of the court amounts to improper conduct or practice as an advocate and solicitor; or

(4) Before proceeding to inquire into or investigating into any matter under the provisions of section 87 of this Act the Inquiry Committee may require any person making a written application or complaint to deposit with the Society a reasonable sum not exceeding five hundred dollars to cover necessary costs and expenses and in case the application or complaint is found to be frivolous or vexatious, the sum so deposited or such part thereof as the Inquiry Committee may determine shall be applied for the payment of such costs and expenses; otherwise, the sum so deposited shall be returned to the person making the same.

85.—(1) At the first meeting of the Council held after the 1st day in January in any year, the Council shall appoint an Inquiry Committee comprising five members or former members of the Council of whom three shall constitute a quorum.

(4) The Inquiry Committee shall meet from time to time for the dispatch of business and, subject to any rules made by the Council may regulate the convening, notice, place, management, and adjournment of such meetings, the appointment of a chairman, the mode of deciding questions, and generally the transaction and management of business.

86.—(1) Any application by any person that an advocate and solicitor be dealt with under this Part and any complaint of the conduct of an advocate and solicitor in his professional capacity shall in the first place be made to the Society and the Council shall refer the application or complaint to the Inquiry Committee.

(2) The Supreme Court or any judge thereof or the Attorney-General may at any time refer to the Society any information touching upon the conduct of a solicitor in his professional capacity and the Council shall issue a written order to the Inquiry Committee.

(3) Every written application or complaint received by the Inquiry Committee shall be supported by such statutory declaration or affidavits as the Inquiry Committee may require.

87.—(1) Where the Inquiry Committee has —

(a) received a written order;

(b) decided of its own motion to inquire into any matter; or

(c) received a written application or complaint and is satisfied that there may be grounds for such an application or complaint,

it shall inquire into and investigate the matter and report to the Council on the matter.

(2) The Inquiry Committee shall also report to the Council where the Inquiry Committee is satisfied that there are no grounds for such an application or complaint.

(3) For the purposes of any such investigation the Inquiry Committee may —

(a) call upon or employ any person to make or assist in the making of whatever preliminary inquiries it deems necessary;

(b) require the production for inspection by the Inquiry Committee or any person so employed of any books, documents or papers which may relate to or be connected with the subject matter of the investigation and may require any person to give information in relation to such books, documents or papers; and

(c) require the member concerned to give all information in relation to any such books, documents or papers which may be reasonably required by the Inquiry Committee or by the person so employed.

(5) Before any inquiry or investigation begins in respect of any matter —

(a) the Inquiry Committee shall post or deliver to the advocate and solicitor concerned —

(i) copies of any written application or complaint and of any statutory declarations or affidavits that have been made in support of the application or complaint; and

(ii) a notice setting out any or any further particulars that may be necessary to disclose the reason for the inquiry or investigation and inviting the member concerned, within such period (not being less than fourteen days) as may be specified in the notice, to give to the Inquiry Committee any written explanation he may wish to offer and to advise the Inquiry Committee if he wishes to be heard by the Committee; and

(b) the Inquiry Committee shall allow the time specified in the notice to elapse and shall give the advocate and solicitor concerned reasonable opportunity to be heard if he so desires and shall give due consideration to any explanation he may make.

(6) Subject to the provisions of this Act and to any rules made by the Council under this Act the Inquiry Committee may regulate its own procedure as it deems fit.

88.—(1) The Council shall consider the report of the Inquiry Committee and according to the circumstances of the case shall determine —

(a) that a formal investigation is not necessary; or

(b) that no cause of sufficient gravity exists for a formal investigation but that the advocate and solicitor should be ordered to pay a penalty under section 89 of this Act: or

(c) that there should be a formal investigation by a Disciplinary Committee; or

(d) that the matter be referred back to the Inquiry Committee, or adjourned for consideration.

(2) The Council shall inform the advocate and solicitor and the person who made the application or complaint of the manner in which it has determined the application or complaint and in the event of the determination being that a formal investigation is unnecessary the Council shall on the request of that person furnish him with their reasons in writing.

89.—(1) If the Council determines under section 88 of this Act that no cause of sufficient gravity exists for a formal investigation but that the advocate and solicitor should be ordered to pay a penalty it may order the advocate and solicitor to pay a penalty of not more than two hundred and fifty dollars.

(3) Before the Council makes an order for the payment of a penalty under this section it shall notify the advocate and solicitor concerned of its intention to do so and give him a reasonable opportunity to be heard by the Council.

90. If the Council determines under section 88 of this Act that there should be a formal investigation the Council shall forthwith apply to the Chief Justice to appoint a Disciplinary Committee which shall hear and investigate the matter.

91.—(1) The Chief Justice may from time to time appoint a committee from among solicitors who have in force a practising certificate to be known for the purpose of this Act as a Disciplinary Committee.

92.—(1) The Rules Committee may from time to time make rules for regulating the hearing and investigation of matters before or by a Disciplinary Committee:

Provided that no such application or complaint shall be heard or investigated before less than three members of a Disciplinary Committee.

(2) For the purpose of any application or complaint heard and investigated by them under this Act the Disciplinary Committee may administer oaths and the Society or the applicant or person making the complaint and the solicitor to whom the application or complaint relates and (if so instructed by the Disciplinary Committee) the secretary of the Disciplinary Committee may sue out writs of subpoena *ad testificandum* and of *duces tecum* but no person shall be compelled under any such writ to produce any document which he could not be compelled to produce on the trial of an action.

(3) The writs referred to in subsection (2) of this section shall be served and may be enforced as if they were writs issued in connection with a civil action in the High Court.

(4) Any person giving evidence before a Disciplinary Committee shall be legally bound to tell the truth.

(6) In sections 172, 173, 174, 175, 177, 179, 182 and 228 of the Penal Code the words 'public servant' shall be deemed to include a member of a Disciplinary Committee taking part in any investigation under this section, and in sections 193 and 228 of the Penal Code the words 'judicial proceeding' shall be deemed to include any such investigation as aforesaid.

93.—(1) After hearing and investigating any matter referred to it a Disciplinary Committee shall record its findings in relation to the facts of the case and according to those facts shall determine —

(a) that no cause of sufficient gravity for disciplinary action exists under section 84 of this Act; or

(b) that while no cause of sufficient gravity for disciplinary action exists under that section the advocate and solicitor should be reprimanded; or

(c) that cause of sufficient gravity for disciplinary action exists under that section.

(3) The findings and determination of the Disciplinary Committee under this section shall be drawn up in the form of a report of which —

(a) a copy shall be submitted to the Chief Justice and the Society; and

(b) a copy shall on request be supplied to the advocate and solicitor concerned and to the person who made the application or complaint.

94.—(1) If the determination of the Disciplinary Committee under section 93 of this Act is that cause of sufficient gravity for disciplinary action exists under section 84 of this Act the Society shall without further direction or directions proceed to make an application in accordance with the provisions of section 98 of this Act.

98.—(1) An application that a solicitor be struck off the roll or suspended from practice or censured or that he be required to answer allegations contained in an affidavit shall be made by originating summons *ex parte* for an order calling upon the solicitor to show cause.

(2) An application under subsection (1) of this section may be made to a judge and shall include an application for directions as to service if the solicitor is believed to be outside Singapore.

(3) If the solicitor named in the order is or is believed to be within Singapore the provisions of the Rules of the Supreme Court for service of writs of summons shall apply to the service of the order.

(4) If an order to show cause is made a copy of the affidavit or affidavits upon which the order was made shall be served with the order upon the solicitor named in the order.

(6) The application to make absolute and the showing of cause consequent upon any order to show cause made under subsections (1) and (2) of this section shall be heard by a court of three judges of whom the Chief Justice shall be one and from the decision of that court there shall be no appeal except to the Judicial Committee of Her Britannic Majesty's Privy Council. For the purposes of an appeal to that Committee an order made under this subsection shall be deemed to be an order of an appellate court.

(8) Subject to the provisions of this section the Rules Committee may make rules for regulating and prescribing the procedure and practice to be followed in connection with proceedings under this section and under sections 100 and 102 of this Act and in the absence of any rule or rules dealing with any point of procedure or practice the Rules of the Supreme Court may be followed as nearly as the circumstances permit."

Part VII of the Legal Profession Act thus prescribes in detail the steps which must be taken before an advocate and solicitor can be disciplined either by being struck off the roll or suspended from practice or censured or ordered to pay a penalty not exceeding $250.

Mr. Newey contends that there was a failure to comply with the rules of natural justice. His argument is two-fold. First, he relies on the provisions of section 87(5) which *inter alia* require the Inquiry Committee, "before any inquiry or investigation begins in respect of any matter", to post or deliver to the advocate and solicitor concerned "copies of any... complaint and of any statutory declarations... that have been made in support of the ... complaint". He says that in section 87(5) Parliament has in effect prescribed that the rules of natural justice be followed by the Inquiry Committee and he submits that a failure to comply with the provisions of section 87(5) renders void its proceedings with the result that all subsequent proceedings are a nullity.

His first argument is put in this way. It is common ground that the Statutory Declaration of Madam Seah Huay was made on 21st February 1973 and was not communicated to Mr. Chan until 1st August 1973 during the hearing before the Disciplinary Committee. The Inquiry Committee, although it had on 27th November 1972 sent to Mr. Chan a copy of Madam Seah Huay's first letter of complaint dated 3rd November 1972 and on 4th December 1972 sent to Mr. Chan a copy of the second letter of complaint dated 27th November 1972, had not as yet begun its inquiry or investigation in respect of her complaint. The Inquiry Committee were, at that stage simply carrying out their duty under section 87(1)(c) to satisfy itself that there may be grounds for such a complaint and to do so it asked Mr. Chan for an explanation. It was only after it had received the Statutory Declaration in February 1973 that it began its inquiry or investigation in respect of the complaint to arrive at a decision. Accordingly, the Inquiry Committee had failed to comply with the mandatory provisions of section 87(5)(a)(i) because it did not send a copy of the Statutory Declaration to Mr. Chan.

The question that has to be resolved in this argument must, in our opinion, depend upon the facts and circumstances of the case. In our judgment, on the facts and circumstances the Inquiry Committee had begun its inquiry or investigation before the Statutory Declaration came into existence and there was there-

fore no failure to comply with the provisions of section 87(5)(a)(i).

The second argument advanced by Mr. Newey is that in any event the rules of natural justice require the Inquiry Committee to send a copy of the Statutory Declaration to Mr. Chan before it makes its report to the Council of the Law Society. Mr. Newey supports his argument in this way. It is an essential requirement of natural justice that before someone is condemned he must be given an opportunity of defending himself and in order that he may do so that he is to be made aware of the charges or allegations or suggestions which he has to meet. He contends that Mr. Chan had a right to be heard and as part and parcel of that right he should have been supplied with a copy of Madam Seah Huay's Statutory Declaration. The familiar cases of *Surinder Singh Kanda* v. *The Government of the Federation of Malaya*[1] and *Ridge* v. *Baldwin*[2] are relied upon. In *Surinder Singh Kanda* Lord Denning who delivered the judgment of the Judicial Committee of the Privy Council equated the *audi alteram partem* maxim with fairness. The case concerned the dismissal of a police officer who claimed that the furnishing of a copy of the Findings of the Board of Inquiry to the Adjudicating Officer appointed to hear the disciplinary charges, coupled with the fact that no such copy was supplied to him amounted to such a denial of natural justice as to entitle the court to set aside the proceedings. Lord Denning said that "no one who has lost a case will believe he has been fairly treated if the other side has had access to the judge without his knowing".

In *Ridge* v. *Baldwin*, again a case of a police officer who claimed for a declaration that his dismissal was illegal, *ultra vires* and void because the watch committee had failed to observe the principles of natural justice. Lord Morris said at page 113: —

"The watch committee were under a statutory obligation (see Police Act, 1919, section 4(1)) to comply with the regulations made under the Act. They dismissed the appellant after finding that he had been negligent in the discharge of his duty. That was a finding of guilt of the offence of neglecting or omitting diligently to attend to or to carry out his duty. Yet they had preferred no charge against the appellant and gave him no notice. They gave him no opportunity to defend himself or to be heard. Though their good faith is in no way impugned, they completely disregarded the regulations and did not begin to comply with them.

My Lords, I cannot think that any decision so reached can have any validity and unless later events have made it valid it ought not to be allowed to stand. Had the regulations been applied but if there had been some minor procedural failure different considerations might have applied. There was, however, no kind of compliance with them. In my judgment, once there was a report or allegation from which it appeared that a chief constable may have committed an offence it was a condition precedent to any dismissal based on a finding of guilt of such offence that the regulations should in essentials have been put into operation. They included and incorporated the principles of natural justice which, as Harman L.J. said, is only fair play in action. It is well established that the essential requirements of natural justice at least include that before someone is condemned he is to have an opportunity of defending himself, and in order that he may do so that he is to be made aware of the charges or allegations or suggestions which he has to meet: see *Kanda* v. *Government of Malaya*. My Lords, here is something which is basic to our system: the importance of upholding it far transcends the significance of any particular case".

These two cases are cases where the dismissing authority were held to be bound to observe the rules of natural justice in deciding whether or not to dismiss a police officer and where the consequences of a breach of the rules of natural justice are discussed. An essential element is the requirement of "fairness" or "fair play in action". A case which in our opinion is more directly in point is *Furnell* v. *Whangarei High Schools Board*,[3] a decision of the Judicial Committee of the Privy Council. The headnote reads as follows: —

"The appellant was employed as a teacher at a high school in New Zealand and agreed to serve under the conditions laid down in the Secondary and Technical Institute Teachers Disciplinary Regulations 1969, made under section 161A of the Education Act 1964. On 20th March 1970 he was notified by the chairman of the respondent school board that a complaint had been made about his conduct as a teacher at the school and that it had been investigated by a sub-committee set up under regulation 4 of the 1969 regulations; that he was charged with certain disciplinary offences under section 158 of the 1964 Act and that by virtue of the occurrences listed he was guilty of conduct which showed his unfitness to remain in his position at the school and that he was suspended from his duties as from 20th March pending the determination of the charges. While suspended he was not entitled to any remuneration. The letter required him (pursuant to regulation 5(2) to state whether he admitted or denied the charges and to forward any explanation he might wish to give. In accordance with regulation 5(3) he was also informed that if he wished he might make a statement in person to the board. The appellant's solicitors wrote to the chairman of the board asking for detailed particulars of the charges. The chairman supplied them with those particulars on 6th April. On 20th April the appellant's solicitors sent a lengthy document to the chairman as the explanation of the appellant. He denied each and every offence. Pursuant to regulation 5(4) the board decided to refer the charges to the Director-General of Education, who in turn decided, under regulation 5(5)(c), to refer the charges to the Teachers' Disciplinary Board for hearing and determination. He notified the appellant to that effect by letter dated 29th May. The hearing was fixed for 30th June and the appellant was reminded that under regulation 8(2) he could either present his own case or be represented at the hearing by counsel or agent. The hearing never took place because the appellant brought proceedings against the school board and the members of the Teachers' Disciplinary Board. He claimed an injunction directed to the school board removing the suspension and reinstating him to teaching duties and, against the disciplinary board, a writ of prohibition prohibiting them from hearing and determining the charges. He also moved for a writ of *certiorari* to quash the decisions of the school board. He alleged that there had been a denial of natural justice in that, *inter alia*, he had not been told that his conduct was being investigated by the sub-committee under regulation 4 and had not been given any opportunity of being heard either by the sub-committee before they reported to the school board or by the school board before the decision to suspend him from his duties was taken. The trial judge granted the orders sought insofar as they related to the proceedings 'so far taken'. The school board appealed but before the hearing of the appeal came on the appellant resigned from the board's employment. The Court of Appeal of New Zealand allowed the school board's appeal. On appeal to the Privy Council the appellant sought the restoration of the issue of a writ of *certiorari*.

Held (Lord Reid and Viscount Dilhorne dissenting) — The appeal would be dismissed. The regulations had been faithfully followed and in the circumstances the court was not required to supplement their provisions. The procedure laid down in the regulations was not unfair; the principle of natural justice, that a person must be given a fair opportunity of correcting or contradicting what was said against him before he was condemned or criticised, had not been violated by the action of the sub-committee because under the scheme of procedure set out in the regulations they neither condemned nor criticised, and on the evidence there were no grounds for thinking that they had acted unfairly; nor were the school board required to give the appellant an opportunity of being heard before suspending him from his duties pending the determination of the charges against him: although suspension

might involve hardship, it was not classified as a penalty either in the regulations or the Act; moreover regulation 5, of which the appellant knew by the term of his employment, clearly laid down that the written statement of a teacher (under regulation 5(2)) and the oral personal statement (under regulation 5(3)) would be made after any decision to suspend had been taken; in the appellant's case there were no grounds for thinking that the respondent board had acted unfairly in exercising their discretionary power to suspend him; they had to take into account the interests of the pupils and parents and of the public as well as those of a teacher and in the circumstances they had not acted irresponsibly or unfairly".

Lord Morris, who delivered the majority judgment, after setting out the relevant provisions of the New Zealand Education Act 1964 and the Education Amendment Act 1964 and of the regulations made thereunder said at page 411: —

"On behalf of the appellant it was contended that he had a right to be heard by the sub-committee; alternatively it was contended that if he was not heard by the sub-committee he should have been heard by the board if they contemplated suspending him; the submission was not developed that he had a right to be heard both by the sub-committee and by the board before any decision to suspend was made. The contentions as to the nature of his right to be heard by the sub-committee were somewhat imprecise; it was contended that he should have heard the evidence if any received by the sub-committee and should have been allowed to put questions informally (without his questioning developing into a formal cross-examination) and been allowed to give his version of the matters of complaint and to call witnesses if he so wished.

In support of these claims the rules of natural justice were invoked. It becomes necessary therefore to consider whether the detailed and elaborate code which prescribes the procedure to be followed when there is a suggestion of an offence under section 158 is a code which gives scope for unfairness and whether in its operation the court in the interests of fairness must supplement the written provisions. In the present case do the well-known words of Byles J. in *Cooper* v. *Wandsworth Board of Works* apply, viz, '... although there are no positive words in a statute requiring that the party shall be heard, yet the justice of the common law will supply the omission of the legislature'? Or is the code one that has been carefully and deliberately drafted so as to prescribe procedure which is fair and appropriate? In whatever way the status of the appellant as a teacher is in law to be defined he agreed to serve under the conditions laid down in the regulations and unless some provisions are to be read into them or are incorporated in them it is clear that they were faithfully followed. It is not lightly to be affirmed that a regulation that has the force of law is unfair when it has been made on the advice of the responsible Minister and on the joint recommendation of organisations representing teachers employed and those employing. Nor is it the function of the court to redraft the code. As was said in *Brettingham-Moore* v. *Municipality of St. Leonards:*

'The legislature has addressed itself to the very question and it is not for the court to amend the statute by engrafting upon it some provision which the court might think more consonant with a complete opportunity for an aggrieved person to present his views and to support them by evidentiary material'.

It has often been pointed out that the conceptions which are indicated when natural justice is invoked or referred to are not comprised within and are not to be confined within certain hard and fast and rigid rules (see the speeches in *Wiseman* v. *Borneman*). Natural justice is but fairness writ large and juridically. It has been described as 'fair play in action'. Nor is it a leaven to be associated only with judicial or quasi-judicial occasions. But as was pointed out by Tucker L.J. in *Russell* v. *Duke of Norfolk* the requirements of natural justice must depend on the circumstances of each particular case and the subject-matter under consideration".

Later on Lord Morris said, at page 413: —

"The whole scheme of the regulations and of the provisions of the Education Act 1964 points to the conclusion that the task of the persons or sub-committee appointed under regulation 4 is to give consideration to a complaint with a view to presenting a report to the board (i.e. the governing body of the school in question). Their finding may be that the complaint could be ignored as being mischievous or irresponsible. Their finding on the other hand may be that the complaint might have substance and could not be ignored. The absence of any provision relating to making a communication to the teacher concerned must have been deliberate since the regulations proceed with great particularity to specify when and how communication should be made to him and when and how he should make response. The procedure for the preliminary investigation of a complaint before ever there is a charge is procedure which must have been devised as an additional safeguard for teachers. If those investigating a complaint thought in any particular circumstances that it would be desirable for them to ask a teacher to see them with a view to seeking his explanation of some matter it would be open to them to take that course. There might be some relatively straightforward issue capable of explanation or some situation which may have resulted from a misunderstanding. Those investigating in the exercise of their discretion would do what was reasonable. But if they thought that a complaint (as for example a complaint of sustained and continuing inefficiency) could not be so simply disposed of and could really only be dealt with under the subsequent procedure as laid down there would be nothing unfair in their reporting to such effect without communicating with the teacher concerned. Certainly in the present case there are no grounds for holding that the sub-committee acted unfairly. When the nature of the detailed and formulated charges in this case and of the lengthy and detailed comments of the appellant are considered it seems reasonably clear that matters could not possibly have been disposed of without some kind of inquiry extending very much beyond any form of preliminary investigation of complaints.

There is a marked contrast in the regulations between a complaint and a charge. So also is there a contrast between investigating a complaint before ever there is a charge and a 'determination of the matter' (see regulation 5(1)), which is the investigation of a charge. One of the principles of natural justice is that a man should not be condemned unheard. But the sub-committee do not condemn. Nor do they criticise.

In the present case the terms of the report of the sub-committee are not known. On behalf of the appellant it was first suggested and in his written case it is claimed that he had been entitled to see the report; that suggestion was not pursued. There is neither condemnation nor criticism of a person if it is found that there are matters calling for determination under a scheme of procedure which amply provides (1) that before there can be any adverse finding a person must know what charge is alleged and (2) must have opportunity to answer the charge and (3) that before those dealing with the charge can condemn to punish they must be satisfied of guilt and (4) that their decision is subject to an appeal by way of rehearing. In their Lordships' view the scheme of the procedure gives no scope for action which can properly be described as unfair and there are no grounds for thinking that the sub-committee acted unfairly".

Similarly, in the present case, the requirements of natural justice must depend on the particular circumstances of this case and the subject-matter under consideration. The Inquiry Committee in cases such as the present one do not either condemn or criticise. They merely report in regard to a complaint and if at a later date there follows a charge, Part VII of the Legal Profession Act lays down specifically the tribunal, *viz.* a Disciplinary Committee, to hear and investigate and to determine the matter and lays down the procedure regulating such hearing and investigation. Finally, Part VII lays down the tribunal, *viz.* a court of three judges of the High Court of whom the Chief Justice shall be one, which decides whether or not the advocate and solicitor concerned is guilty under section 84 and the punishment that ought to be imposed. In

our judgment, having regard to the elaborate provisions of Part VII which we find were duly complied with there is nothing which can be properly described as unfair and there are no grounds for thinking that the Inquiry Committee acted unfairly when the Statutory Declaration merely repeats the contents of Madam Seah Huay's letter of 3rd November 1972.

Another contention put forward by Mr. Newey relates to the proceedings before the Disciplinary Committee. He submits that a whole mass of hearsay and irrelevant evidence was introduced at the hearing before the Disciplinary Committee which evidence, he submits, was clearly inadmissible in relation to the charges brought against Mr. Chan. He also submits that prejudicial matters were also introduced on behalf of the Law Society at the hearing before the Disciplinary Committee so that in the result the hearing before the Disciplinary Committee was so unsatisfactory that this court should not act on the report and the findings of the Disciplinary Committee.

We do not think it necessary to set out the alleged inadmissible or prejudicial pieces of evidence or matters. The Disciplinary Committee is composed of advocates and solicitors appointed by the Chief Justice from among those who hold practising certificates. It is a tribunal composed of practising members of the legal profession who have to sit in judgment on a fellow member of the profession. Their impartiality has never been questioned. At the hearing no objection on the ground of hearsay or irrelevant was taken by counsel acting for Mr. Chan nor was any objection on grounds of inadmissibility raised in the detailed written submission of his counsel at the conclusion of the hearing. The Disciplinary Committee in their Report specificially stated that in arriving at their findings they excluded from their consideration all extraneous, irrelevant and prejudicial matters which the Law Society attempted to introduce in evidence and in their written submission. Our attention has also been drawn to those portions of the evidence and the Record of the entire proceedings before the Disciplinary Committee which contain the alleged inadmissible or prejudicial evidence and submissions.

We have formed the conclusion that we can and will receive the findings of the Disciplinary Committee and can and will act upon them if we are satisfied on all that is before us that their findings are correct and were not influenced by hearsay evidence or by prejudicial matters. In our judgment the Disciplinary Committee were not so influenced or prejudiced and we are satisfied that their findings are correct. This brings us to the other contentions put forward by Mr. Newey.

Mr. Newey submits that the Disciplinary Committee were wrong in accepting Madam Seah Huay as a credible witness and in preferring her evidence to that of Mr. Chan. It is submitted that although Madam Seah Huay may not have been deliberately trying to deceive the Disciplinary Committee by giving false evidence, her evidence revealed that she had a poor memory, had misunderstood what she had been told by Mr. Chan and was prone to self-deceit. On the other hand it is submitted that Mr. Chan had emerged from a searching cross-examination by counsel for the Law Society as a frank and candid witness and on all relevant matters his evidence was more inherently probable than Madam Seah Huay's evidence.

It is to be observed that these submissions were also advanced before the Disciplinary Committee and we see no reason to doubt that the Disciplinary Committee had failed to consider them. Obviously, the Disciplinary Committee, in preferring the evidence of Madam Seah Huay to that of Mr. Chan, rejected these submissions and accepted her as a credible witness. They had the advantage, which we do not have, of having seen and heard the witnesses, both of whom were subjected to searching and detailed cross-examination, and we are prepared to accept their assessment of the credibility or otherwise of these two witnesses and also to accept and act on their findings unless it can be shown to us that their assessment and findings were clearly wrong or based on insufficient or inadmissible evidence or on wrong inferences from facts or on any error in law. In our judgment, the Disciplinary Committee have not erred in any material circumstance and we accept their assessment of these two witnesses.

This brings us to a consideration of Mr. Newey's specific submission on each of the three charges which the Disciplinary Committee found proved against Mr. Chan. The first charge is the champerty charge. It is conceded that an agreement between a solicitor and his client for the payment of the solicitor's costs by percentage of the amount recovered on the claim or in an action without an express stipulation for payment only in the event of success can properly be held to be a champertous agreement. See *Lau Liat Meng* v. *Disciplinary Committee*[4] where the Judicial Committee of the Privy Council, at page 144 said: —

> "The appellant relied on section 49 of the Advocates and Solicitors Ordinance (Cap. 188), which permits a solicitor to make an agreement in writing with his client for the payment of his costs by commission or percentage, so that any agreement for such payment should not be regarded as champertous unless it stipulated expressly for payment only in the event of success (see section 57(b)) and that there was no such stipulation here.
>
> The answer to this contention is that an express stipulation is unnecessary since an agreement calling for payment by percentage of the amount recovered on the claim or in an action is undeniably one stipulating for payment only in the event of success".

It is submitted that the Disciplinary Committee failed to consider Mr. Chan's evidence that he explained to Madam Seah Huay the difference between Solicitor and Client costs and party and party costs, that she would have to pay him his costs in addition to the costs the other side would pay and that he would bill her his costs which "if she disagreed . . . she could have it taxed and the Registrar would probably tax it at about 10%". This submission is based on the assertion by Mr. Newey that in their Report, the Disciplinary Committee did not set out or refer to that particular portion of Mr. Chan's evidence. We cannot accept this contention. In our opinion it is unnecessary for the Disciplinary Committee to refer verbatim to any part of the evidence of a witness in its Report. Furthermore, at paragraph 28 the Disciplinary Committee clearly had in the forefront of their

consideration of the first charge the explanation which Mr. Chan gave regarding the 10% charges. In any event, having regard to all the facts and circumstances of the entire matter, it is inconceivable to us that any solicitor practising in Singapore would "explain" to a client such as Madam Seah Huay, a totally illiterate woman, "the difference between solicitor and client costs and party and party costs and would also tell her she could have the solicitor and client costs taxed before the Registrar". We would ourselves reject this evidence as we are in no doubt that this evidence is incapable of belief and was put forward to try and explain away as a misunderstanding the undeniable evidence that 10% was agreed as the solicitor's costs.

It is also submitted that the Disciplinary Committee, having noted Madam Seah Huay's strong dissatisfaction with her solicitor, had failed to consider that her strong dissatisfaction, coupled with the possibility of self-deception or failure to understand what she had been told, had resulted in her sticking to her story that the arrangement was for her solicitor to take $10 out of every $100 if the claim was successful. It is argued that this omission, together with the wrong inference drawn by the Disciplinary Committee in respect of Mr. Chan's written offer to reduce his costs from $1,000 to $600 and the proper inference to be drawn that all his acts were consistent with his denial that there was a 10% champertous agreement, is sufficient reason for this court to come to the conclusion that the Disciplinary Committee could not properly feel sure of Mr. Chan's guilt on the first charge as well as on the other two charges. We are urged that we should not accept the findings of the Disciplinary Committee. We are unable to accept these submissions. We realise that the allegations are serious allegations and we have gone through all the printed evidence with great care. Having done so we are satisfied that the evidence of Madam Seah Huay rings true and we are not in any real doubt that Mr. Chan's evidence is unacceptable.

Similar criticisms were made of the Disciplinary Committee with regard to their findings and Report in respect of the second and fourth charges. It is also contended that they were wrong in treating the evidence of Ng Jui Meng, the assistant personnel manager employed by the injured son's employers, who told Madam Seah Huay the actual compensation payment made by the Insurance Company and who wrote the letters of complaint for Madam Seah Huay, as corroborating her evidence on the second charge. The submission is that in the end the guilt or otherwise of Mr. Chan on all the three charges now before us depends on the evidence of Madam Seah Huay. To put it colloquially, it is her word against her solicitor's and on the evidence and the probabilities it is submitted that the Law Society has failed to discharge the burden upon them to prove him guilty on each of those charges.

We agree that the evidence of Ng Jui Meng did not corroborate Madam Seah Huay's evidence in the proper sense of that term. Nonetheless in our judgment, the Disciplinary Committee were justified in preferring Madam Seah Huay's evidence to the evidence of Mr. Chan and we concur with and accept their findings and we propose to act on them. In our judgment due cause has been shown that he should be dealt with under section 84(1) and after considering the facts brought to our attention relevant to the punishment to be imposed we have arrived at the view that the appropriate punishment for the charges found proved is that Mr. Chan be struck off the roll and we so order. We also order that he should pay the costs of the entire proceedings.

Order accordingly.

Solicitors: *S. K. Lee & Co.; Leong & Gay.*

ATTORNEY-GENERAL v. PANG CHENG LIAN & ORS.

[O.C.J. (Wee Chong Jin C.J.) November 30, 1974]
[Singapore — Motion in Originating Summons No. 384 of 1974]

Contempt of Court — Jurisdiction — Preparation, publication and distribution of article scandalising the court — Liability of reporter supplying background information and distributors making innocent dissemination.

An article entitled "Singapore — Selective Justice" in the *Newsweek* magazine of November 11, 1974 contained various statements scandalizing the court and constituting contempt of the court. The Attorney-General moved for orders of committal against the respondents. The 1st respondent was employed as a part-time reporter or stringer of the magazine. The 2nd respondent was employed as the circulation manager for Singapore, Malaysia and Brunei, and was responsible for sale of subscription and newstand copies of the magazine. The 3rd respondent was employed as the distributor of the magazine in Singapore, Malaysia and Brunei. The editor of the magazine stated that he was in charge of the preparation, writing, editing and publishing the offending article and the author of the article. The 1st respondent volunteered materials which enabled the author to write the article. The 2nd and 3rd respondents innocently were responsible for the circulation and sale of the magazine in Singapore. All the respondents stated that they had no pre-knowledge of the contents of the article and no intention to scandalise the court.

Held: (1) one kind of conduct which is punishable as contempt of court is that scandalising the court itself;

(2) the 1st respondent bears some real responsibility for the preparation of and publication of the offending article. The reporter knows and ought to know the background information will be used in connection with the main purpose for which his report is required for publication. If the background information is scanty and/or inaccurate and an article based on it is written and published which amounts to scandalising of the court, the reporter, can fairly be said to bear responsibility for the preparation and publication of the offending article;

(3) innocent dissemination is in law no defence in cases of contempt of court where the dissemination is made by those who deal with the publication as a matter of trade or business and distribute it as wholesalers or distributors to subscribers.

R. v. *Evening Standard Co. Ltd.*(5) and *R.* v. *Griffiths & Ors.*(6) applied.

Cases referred to:-

(1) *Attorney-General* v. *Times Newspapers* [1974] A.C. 273.

(2) *In re Read and Huggonson St. James's Evening Post* (1742) 2 Atk. 469 at p. 471.

(3) *R.* v. *Gray* [1900] 2 Q.B. 36.

(4) *R.* v. *Davies* [1906] 1 K.B. 32.

(5) *R.* v. *Evening Standard Co. Ltd.* [1954] 1 Q.B. 578.

(6) *R.* v. *Griffiths & Ors.* [1957] 2 Q.B. 102.